No. 82-1622

Off... ...me Court, U.S.
FILED
APR 28 1983
ALEXANDER L. STEVAS,
CLERK

In The

Supreme Court of the United States

October Term, 1982

PEOPLE OF THE STATE OF ILLINOIS ex rel. SAMUEL BARUCH,

Petitioner,

vs.

SHERIFF OF COOK COUNTY,

Respondent.

On Petition For Writ Of Certiorari To The Appellate Court Of Illinois, First Judicial District

RESPONDENT'S BRIEF IN OPPOSITION

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Printed by Authority of the State of Illinois (P.O. 31730—50—4-29-83)

QUESTION PRESENTED FOR REVIEW

Must the trial court in a habeas corpus proceeding, after determining the validity of the demanding state's information in a rendition warrant, then examine the sufficiency of the documents supporting the information.

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OPINION BELOW

The Appellate Court of Illinois, First District, affirmed the trial court's denial of the petitioner's motion for a writ of habeas corpus in an unpublished opinion. *People ex rel. Samuel Baruch v. Sheriff of Cook County*, No. 81-1511 (1st Dist. May 14, 1982), *Ill. Rev. Stat.*, (1979) ch. 110, par. 23. A petition for leave to appeal to the Illinois Supreme Court was denied February 1, 1983. Copies of both the Appellate Court's opinion and the Illinois Supreme Court's order are attached to the petitioner's brief as appendices.

JURISDICTION

Petitioner invokes this Court's jurisdiction pursuant to 28 U.S.C. §1257(3). However, as treated more fully below, respondent submits that no reason exists for this Court to exercise its sound judicial discretion and grant the petition for a writ of certiorari.

CONSTITUTIONAL PROVISION INVOLVED

U.S. Const. Amend. XIV provides, in pertinent part that:

> Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF FACTS

The facts relevant to the issue raised by petitioner are adequately set forth in the opinion of the Illinois Appellate Court. *People ex rel. Samuel Baruch v. Sheriff of Cook County*, No. 81-1511 (1st Dist. May 14, 1982).

REASON FOR DENYING THE WRIT

THE ILLINOIS APPELLATE COURT FULLY CONSIDERED AND CORRECTLY DECIDED THE ISSUE RAISED HERE BY PETITIONER. MOREOVER, THE ISSUE PRESENTED IS NOT A UNIQUE QUESTION JUSTIFYING REVIEW BY THIS COURT.

Petitioner seeks this writ of certiorari contending that the trial court, in a state habeas corpus proceeding challenging extradiction, erred in refusing to review supporting documents which accompanied the information filed by the State of Florida.

Review of this case is not warranted. The issue presented is not unique. Both the trial and appellate court followed well-reasoned, long-settled precedent in properly refusing to examine the documents which supported the Florida warrant.

At the hearing, the State offered into evidence the Governor's rendition warrant and the supporting papers on which it was based. Petitioner did not challenge whether the Florida information properly charged defendant with a crime but argued instead that an examination of the supporting documents would show that they were "legally insufficient" to support the issuance of an information charging defendant with securities violations.[1] The trial judge ruled that for purposes of a habeas corpus proceeding on an extradition rendition warrant, it was only necessary to consider whether there has been a valid information filed by the State of

[1] These documents consisted of promissory notes which were alleged by the State of Florida to be securities and were therefore required to be registered.

Florida. Once that had been established, the trial judge properly refused to consider the merits of the sufficiency of the matters contained in the information.

The propriety of the judge's ruling is evidenced by the holding of this Court, in similar circumstances, in *Michigan v. Doran*, 439 U.S. 282 (1978). In that case, Doran petitioned for a writ of habeas corpus challenging the validity of the Governor's extradition warrant. The Michigan Supreme Court reversed the denial of habeas relief and ordered Doran's release on the ground that Arizona failed to show a factual basis for the Arizona judicial finding of reasonable cause. This Court reversed, finding that the Michigan Supreme Court's holding was without legal support and overlooked the conclusory language in which criminal charges are ordinarily cast. The Court stated that, under Art. IV, sec. 2, of the United States Constitution, the courts of the asylum state are bound to accept the demanding state's judicial determination since the proceedings of the demanding state are "clothed with the traditional presumption of regularity." 439 U.S. at 290. Thus, the Court concluded:

> We hold that once the Governor of the asylum state has acted on a requisition for extradition based on the demanding state's judicial determination that probable cause existed, no further judicial inquiry may be had on that issue in the asylum state.

439 U.S. at 290. These principles are clearly dispositive of the petitioner's contention in this case and thus the trial judge properly limited the scope of his review.

These principles were well-settled in Illinois even prior to this Court's pronouncement in *Doran*. In *People ex rel. Gilbert v. Babb*, 415 Ill. 349, 114 N.E.2d 358 (1953), the relator challenged the substance of the in-

dictment contending that the common-law crime of conspiracy upon which the indictment was based was "too nebulous and vague a concept by which to punish the constitutionally protected conduct of free speech, or to inform appellant wherein her conduct was criminal." 415 Ill. at 358. The Supreme Court of Illinois rejected the argument stating:

> Here, again, appellant seeks to raise matters which cannot be tested in the constitutional process of returning a fugitive to the State where he is charged. It is within the power of each State, except as limited by the constitution of the United States, to declare what shall be offenses against her laws, and the words of extradition clause are sufficiently comprehensive to include every offense against the law of the demanding State.
>
> * * *
>
> Appellant does not deny the charge against her and does not deny that she is the fugitive charged or her presence in Massachusetts on the date of the crime. Without more, we must conclude that the indictment is in substantial conformity with the laws of Massachusetts, which is all that we may determine in this *habeas corpus* proceeding. Its sufficiency to substantially charge a crime as a matter of technical pleading is for the courts of Massachusetts to decide under Massachusetts law ..... 415 Ill. at 359-360.

The scope of the trial court's inquiry in a habeas corpus proceeding is well defined in Illinois. The Court may properly inquire: whether the accused is the person named in the warrant; whether he is substantially charged with a crime in the demanding state; whether he is a fugitive from justice; and whether the papers are in regular form. *People ex rel. Levin v. Ogilive*, 36 Ill. 2d 566, 224 N.E.2d 247 (1967).

Petitioner did not challenge the extradiction on any of the above grounds but instead argued only that the conduct described in the information, when considered with the supporting documents did not constitute an offense. Inasmuch as the Florida information was valid on its face, whether or not the documents supported that charge, was a matter for the Florida courts, not the Illinois court, to determine. The purpose of extradition is to summarily return the fugitive to the place of the *alleged* offense, not to review the merits of the demanding state's case. *People v. Cheek*, 93 Ill.2d 82 (1982), 442 N.E. 2d 887. This Court as well as the courts of Illinois have made this abundantly clear. This Court should deny the Petition for Writ of Certiorari.

CONCLUSION

For the foregoing reasons, respondent respectfully requests that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

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